IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4030 OF 2007

Mr.Martin Daniel Bhalerao ...Petitioner

V/s.

D.B. Power Electronics(P) Ltd., Pune. ...Respondent

Mr.Nitin A. Kulkarni for Petitioner.
Mr.A.D. Patwardhan for Respondent.

CORAM : V.M. KANADE, J.

DATED : 9th OCTOBER, 2007

P.C:-

1. Heard learned counsel for the Petitioner and learned counsel for the Respondent.

2. Rule. Rule is made returnable forthwith by consent of the parties.

3. Petitioner is challenging the award passed by the 2nd Labour Court, Pune in the Reference(IDA)No.394/1997 whereby the Labour Court was pleased to reject the reference on the ground that the Petitioner herein is not a workman within the meaning of Section 2(s) of I.D.Act.

4. Brief facts in a nutshell are as under:-

The Petitioner was working as as Fitter in Kwik Electra Co. and he was absorbed by the Respondent Company as an Assembler on 04/09/1985. Thereafter, in 1991 the Petitioner was designated as a Junior Engineer and in 1995 the Petitioner was designated as a Senior Supervisor. Services of the Petitioner were terminated on 31/01/1997. The Petitioner raised a Reference before the appropriate government and appropriate government was pleased to refer the matter for adjudication to the Labour Court, Pune. Company filed its written statement and contested the claim of the Petitioner and contended that the Petitioner was not a workman within the meaning of Section 2(s) of the I.D.Act.

5. Learned counsel appearing on behalf of the Petitioner submitted that the nature of the duties of the Petitioners were predominantly that of a workman and, therefore, the Labour Court erred in holding that the Petitioner was not a workman. He invited my attention to the evidence of Shri.Satish Madhukar Katre who was examined by the Company as also evidence of Sujay Vijay Tambaku in support of his submissions. He relied on the judgment of the Apex

Court in the cases of 1) **Burmah Shell Oil Storage and Distribution Co of India Ltd V/s. The Burmah Shell Management Staff Association reported in F.L.R. S.C. 12,** 2) **Ved Prakash Gupta V/s. M/s.Delton Cable India(P.) Ltd. reported in F.L.R. S.C. 417**. He also relied on the judgment of this court in the case of **Union Carbide(India) Ltd. V/s. D. Samuel & Ors. reported in 1998 II CLR 736.**

6. Learned counsel for the Respondent, on the other hand, invited my attention to the duties and responsibility of the Petitioner, which were brought on record at Ex.D-1 and which were admitted by the Petitioner. He submitted that the duties clearly indicated that the Petitioner was working in the capacity of senior supervisor and manager which was evident from the duties which were prescribed. It has been brought on record that the Petitioner was sanctioning leave of his employees also. Duties indicate that he was responsible for the modernization of work methods in his department for the purpose achieving production targets. He was responsible to reduce absenteeism and late attendance in department. He was also responsible for the implementation of the ISO procedure related with his department. It would be profitable to note duties of the Petitioner which

have been enumerated at Ex.D-1 as under:-

"1. He is responsible to Manager(Production).

2. He is responsible for routine work of department.

3. He is responsible for planning and completing activities of department as per schedule given by production Incharge.

4. He is responsible for implementation of the ISO procedure related with his department.

5. He is responsible for implementation of tools and cleaning in the department.

6. He is responsible for inspecting the inward material enlisted in QC 01/ML01.

7. He is responsible for scrap generated to precious items in mechanical assembly and disposal activity and its records.

8. He is responsible for reducing absenteeism and late attendance in dept.

9. He is responsible for seeing that lunch break is restricted to half an hour only.

10. He is required to contribute for modernization of work methods in his department to achieve production targets.

Quarter yearly review will be taken against each point mentioned in the responsibilities."

7. The Labour Court has considered all these aspects and has come to the conclusion that the Petitioner was working as a Senior Supervisor in the grade of Jr.Engineer and he was performing supervisory duties. There cannot be any dispute about the ratio of the judgments on which reliance was placed by the learned counsel for the Petitioner. However, question whether a person is working or not would depend upon facts and circumstances of each case and it has to be seen what is the predominant nature of the work that is being done by the concerned person. Ratio of the said judgments, therefore, will not be of any assistance to the Petitioner. In my view, there is no infirmity with the order passed by the Labour Court. No case is made out for interfering with the impugned order. Writ Petition is dismissed. Rule is discharged. Under these circumstances, there shall be no order as to costs.

V.M. KANADE, J.